Teamsters Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* E. J. Dougherty Oil and Stone Supply, Inc. Case 14–CC–1672

15 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 11 October 1983 Administrative Law Judge Robert A. Giannasi issued the attached decision. The Charging Party, E. J. Dougherty Oil and Stone Supply, Inc. filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Teamsters Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Belleville, Illinois, its officers, agents, and representatives, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

[1] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT picket or otherwise induce or encourage employees of Maclair Asphalt Co. to strike or refuse, in the course of their employment, to perform services, or threaten, coerce, or restrain Maclair Asphalt Co., where an object of such conduct is to force or require Maclair to cease doing business with E. J. Dougherty Oil and Stone Supply, Inc. or Ee Jay Motor Transport, Inc.

TEAMSTERS LOCAL UNION NO. 50, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried on July 5 and 6, 1983, in St. Louis, Missouri. The complaint alleges that Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by picketing the Charging Party (hereafter Oil and Stone) and "other persons" at a jobsite in Belleville, Illinois, thereby inducing employees of Oil and Stone, Maclair Asphalt Co. (hereafter Maclair), and "other persons" to engage in a strike and coercing Oil and Stone, Maclair, and "other persons" with an object of forcing Maclair to cease doing business with Oil and Stone and of forcing Oil and Stone "or any other person" to cease doing business with Ee Jay Motor Transport, Inc. (hereafter referred to as Ee Jay). Respondent denied the substantive allegations of the complaint. I have received, read, and considered the briefs submitted by the General Counsel, Respondent, and the Charging Party.

Based on the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

Charging Party Oil and Stone maintains its principal office and place of business at 15th and Lincoln Streets in the city of East St. Louis, Illinois, where it is engaged in the business of supplying oil and asphalt for road resurfacing and supplying heating oil to various customers. During a representative 1-year period Oil and Stone purchased and caused to be transported and delivered to its East St. Louis place of business goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were delivered from points located outside the State of Illinois.

Ee Jay also maintains its principal office and place of business at 15th and Lincoln Streets in East St. Louis, Illinois, where it is engaged in the interstate transportation of liquid and dry bulk commodities. During a representative 1-year period, Ee Jay performed services valued in excess of $50,000, of which services valued in excess of $50,000 were performed in, and for various enterprises located in, States other than the State of Illinois.

Maclair is an asphalt construction contractor whose principal office and place of business is located in East

St. Louis, Illinois. For a representative 1-year period, it purchased and caused to be delivered at its East St. Louis, Illinois place of business goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered directly from points located outside the State of Illinois.

Based on the above, I find that Oil and Stone, Ee Jay, and Maclair are persons and employers engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4) of the Act.

II. THE LABOR ORGANIZATION

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. The relationship between Ee Jay and Oil and Stone

Ee Jay and Oil and Stone are commonly owned companies. They were both founded and originally owned by Edward Dougherty Sr., who no longer has any proprietary interest in, but still acts in an advisory capacity to, both firms. His sons, Edward Dougherty Jr. and James A. Dougherty, are equal stockholders in the firms. They each own 50 percent of the stock of Oil and Stone which they obtained through gifts from their father over the past 3 years. They also each own equal shares—8 percent apiece—of the stock of Ee Jay. The remainder of the Ee Jay stock is held in trust for the benefit of the brothers.[1]

In May 1983, Edward Jr. was vice president of both firms and James was president of both firms. About 2 or 3 weeks before the hearing in this case—in mid-June 1983—Edward Jr. became president of Oil and Stone and James became vice president. The remainder of the officers of Ee Jay are Thomas J. Imlay, secretary, and James A. Dougherty, treasurer; the other officers of Oil and Stone are Debra Dougherty, James' wife, secretary, and Edward Jr., treasurer.

Both firms operate out of the same office and location in East St. Louis. The two firms use the same garage, mechanics, and fuel pumps. Debra Dougherty handles the office work for both companies. The property is owned by a company called Christone Realty which is also owned by James and Edward Jr. Both Ee Jay and Oil and Stone pay rent to Christone Realty. They also pay rent to East St. Louis Terminal and Storage Co., another firm owned by the brothers Dougherty, which owns oil tanks at the East St. Louis location from which both Oil and Stone and Ee Jay draw oil.

Ee Jay is the larger firm. It has about 30 employees, some of whom are represented by Respondent.[2] Ee Jay is involved in the transportation of liquid and dry bulk products, mostly petroleum. Oil and Stone is primarily a seasonal operation. During 4 months of the year, its principal period of operation (which lasts from about May through September), Oil and Stone is involved in the spreading of liquid road oil and asphalt at road construction sites. The remainder of the year, its operation, apparently utilizing the services of Edward Jr. only, involves the delivery of heating oil to local school systems.

In Oil and Stone's slow season, Edward Jr. also works for Ee Jay. In the busy season, he works primarily for Oil and Stone. He actually drives oil spreaders and does some mechanical work for the equipment used by Oil and Stone. James, who devotes his time primarily to Ee Jay, does, on occasion, perform services for Oil and Stone. He aids in preparing and securing bids for Oil and Stone. Edward Sr. also performs services for both companies.

Outside the Doughertys themselves, Oil and Stone uses, almost exclusively, employees of Ee Jay to drive its spreaders and perform its operations. Edward Jr. testified, initially, that Oil and Stone had three employees in addition to himself: Don Koch, a farmer who was not an employee of Ee Jay, and Bob Furlow and Lou Werner, who were longtime employees of Ee Jay and were covered under Respondent's labor contract with Ee Jay. Later, it was revealed that other Ee Jay employees worked for Oil and Stone. For example, two employees named Barry and Dalton have, on occasion, driven spreaders and performed mechanical work for Oil and Stone. It was also later revealed that, in 1983, Koch only worked 1 day for Oil and Stone and was paid for 6-1/2 hours of work. There is no other specific evidence that Koch worked for Oil and Stone for any other period of time. Thus, with one very limited exception, the employees of Oil and Stone are also employees of Ee Jay.

Louis Werner testified that he has worked for Ee Jay for 21 years. He drives spreaders for Oil and Stone in the summer months "pretty regular," according to his testimony. However, during those months, he also works for Ee Jay. He estimated that in May he would work 20 percent of the time with Oil and Stone, in June 60 percent, in July and August 90 percent, and in September his work for Oil and Stone would taper off. Werner further testified that he often works for both companies in the same week and, indeed, sometimes for both companies in the same day, a fact which was corroborated by Edward Jr. He is paid once a week by Ee Jay, whether he works for Ee Jay or Oil and Stone.

Ee Jay dispatchers play an important role in the day-to-day operations of Oil and Stone. Werner testified that he would get his Oil and Stone assignments primarily from an Ee Jay dispatcher and that he filled out a daily time report indicating, among other things, which firm he worked for on any particular day. His testimony was contrary in this respect to that of Edward Jr., who testified that he alone made such assignments. Werner credibly testified that, whether he works for Oil and Stone or for Ee Jay, he takes instructions from the dispatcher, who is an Ee Jay employee, James, Edward Jr., or even Edward Sr. He testified that Edward Sr. is at the yard

[1] Edward Jr. testified that the trustee was the Mid-American Bank and Trust Company. The parties later stipulated that James serves as a trustee. It is unclear whether or not both James and the bank are trustees.

[2] Ee Jay also employs mechanics who are apparently represented by another labor organization.

"everyday" and gives instructions to employees of both firms. There was also testimony on the granting of time off to employees of Oil and Stone. Edward Jr. testified that he or his brother would grant time off, but that his father could also suggest time off and his suggestions are followed. Werner credibly testified that he never recalled asking Edward Jr. for time off and that he generally asks a dispatcher for time off. Werner gave a specific example of this at a time when he was working for both Ee Jay and Oil and Stone.[3]

It is undisputed that when the Ee Jay employees work for Oil and Stone they are paid the same wage rate and the same fringe benefits to which they are entitled under the contract between Respondent and Ee Jay. This is certainly true for Werner and Furlow; it is unclear whether Dalton and Barry, who apparently work for Oil and Stone less frequently, are paid the rates set under Respondent's contract or that of the other labor organization which represents mechanics. According to Edward Jr., the employees of Oil and Stone "are paid a wage comparable to that of Ee Jay Motor Transport in order to maintain equilibrum" and to get qualified people. His father decided on this practice some time ago, and, according to Edward Jr., "we've continued that."

According to both Werner and Edward Jr., Ee Jay provides the oil used by Oil and Stone.[4] Ee Jay trucks pick up the oil at refineries and deliver it to the East St. Louis location, where they either deposit it into the oil storage tanks or into Oil and Stone's spreaders. Additionally, when necessary, Ee Jay hauls oil directly to the Oil and Stone jobsites and pumps it into Oil and Stone spreaders. On occasion, Ee Jay equipment and personnel remain on the jobsites to refill the spreaders. Edward Jr. testified that, for these services, Oil and Stone pays Ee Jay a "comparable rate" to that normally paid commercial oil haulers.

Edward Jr. testified that, in March 1983, Oil and Stone owned three chassis and rented three others from Ee Jay. By the time of the hearing, Oil and Stone had purchased the other three chassis from Ee Jay. At all times, Oil and Stone owned the tank and spreader apparatus attached to the chassis. In addition, Oil and Stone owns a coal mix plant where a coal mix is manufactured for use in filling pot holes. Edward Jr., James, Furlow, and Werner work at the plant as needed, about once every "couple of weeks" in season.

There is evidence that, on a monthly basis, Oil and Stone reimburses Ee Jay for certain expenses paid for initially by Ee Jay such as salesmen's salaries, employee wages, rental of equipment, use of oil, and the salaries of Edward Jr. and Debra Dougherty. The employee wages paid initially by Ee Jay and reimbursed by Oil and Stone include not only those of spreaders drivers and the Doughertys but also certain support personnel. Thus, it appears that the two firms, which maintain separate bank accounts, share the services of certain Ee Jay clerical, maintenance, and administrative personnel. Oil and Stone also pays directly by check its pro rata portion of utility bills after Debra Dougherty breaks down the bills into what she believes is a proportionate share for each firm.

2. The alleged picketing

Respondent has had a bargaining relationship with Ee Jay since about 1971. At midnight on May 9, 1983, the Ee Jay employees represented by Respondent struck and set up lawful picket lines at Ee Jay premises and worksites.

On May 24, Edward J. Dougherty Jr. reported with his oil spreader to a jobsite at an intersection in Belleville, Illinois. He was performing a job at the site, on behalf of Oil and Stone, for an asphalt subcontractor, Maclair, some of whose employees are represented by Respondent. Respondent also represents some employees of Hoeffken Brothers, the general contractor on the site.

Dougherty's spreader, which had been filled with oil at the East St. Louis yard, was clearly marked with the Oil and Stone name and logo. The job involved providing a "tack coat" of oil to the designated area prior to the laying of asphalt by Maclair. Dougherty was the sole representative of Oil and Stone at the site. There was no Ee Jay equipment or employee at the site. Dougherty was to spend 3 hours performing the job; it was to begin at 9 a.m. and end at noon. Maclair paid $38 per hour for Oil and Stone's services.

Dougherty arrived at the jobsite about 15 minutes before 9 o'clock in the morning. He toured the site with Bob Pascero, the Maclair job superintendent, and he noticed Ernest Bovenette, an Ee Jay employee, carrying a picket sign. The sign stated that "Ee Jay Motor Transport will not negotiate"; underneath was printed the name of the Union. Bovenette was situated across the road from Dougherty and his spreader, about 60 or 70 feet away. According to Dougherty, Bovenette was standing "at an intersection" where employees of Hoeffken were working and he "spoke to one of their foremen." There is no other evidence as to the exact location of the picket or the location of the other employees or their equipment. However, Respondent's business agent, John Ferguson, testified that, when he arrived at the jobsite, the Oil and Stone spreader was parked in a shopping center across the street from where the job was going to be performed.

Pascero asked Dougherty what the picket was doing. Dougherty replied that he did not know but he suggested asking the picket. They then approached Bovenette and Dougherty engaged him in conversation. Dougherty told Bovenette that Oil and Stone was a separate company and asked what he was doing at the jobsite. Bovenette said he did not know, but that Respondent's business agent, John Ferguson, was "checking on that." Bovenette continued to display the sign.

[3] Generally, I found Werner to be an honest and reliable witness who was testifying about the details of his work in a candid manner. He also appeared to be a disinterested witness. Dougherty's testimony concerning the relationship between Ee Jay and Oil and Stone seemed to be cautious and infected by his own self-interest. He was not candid and seemed to be reluctant to divulge facts not favorable to his position. Accordingly, where the testimony of the witnesses diverge, I credit the testimony of Werner.

[4] Edward Jr. testified that, if Ee Jay is unable to supply oil, Oil and Stone will utilize another firm. He admitted, however, that from January through July 1983 this occurred only "2 or 3" times. Werner testified that he used only the Ee Jay tanks in filling his spreaders.

Shortly thereafter, according to Dougherty, business agent John Ferguson arrived on the jobsite. At this point, Dougherty was approached by Al Shelder, a Maclair employee and Respondent's job steward. Shelder asked Dougherty if he had a union card. He said he did not and stated that he never had one. Dougherty had worked on several other jobsites with Shelder and the latter had never asked him for his card. Dougherty asked whether the request had anything to do with the problem with Ee Jay, and Shelder answered in the affirmative. Shortly thereafter, according to Dougherty, he noticed that Bovenette was displaying a different sign which carried Respondent's name and the statement that Oil and Stone was nonunion.

At some point, according to Dougherty, Pascero walked over to Bovenette, Ferguson, and Shelder, and spoke to them about "possible labor problems." Dougherty testified that he "was on the same side of the street just prior to starting the job" and that he joined the group and overheard the following conversation. Ferguson said, "We have no dispute with Hoeffken [the general contractor] or Maclair . . . . The only dispute we have is with E.J. Dougherty Oil and Stone Supply because it is a non-union company and if they do their job, the union people will probably walk off." Shelder then said, "Yes, we probably will."

At this point, Dougherty said to Pascero, "Bob, I work for Maclair," and asked whether Pascero wanted him to do the work. Pascero decided to call his office. After the call, he told Dougherty that he had been instructed that another company would be used to complete the job. Pascero then went to talk to Ferguson. When the spreader from the other company arrived on the jobsite, Dougherty transferred the oil from his spreader and left. When he left, both Ferguson and Bovenette also left. Dougherty was compensated for the oil transferred from his spreader but he lost 1-1/2 hours' pay.

Ferguson, the only other witness to testify about what happened on May 24, testified that he did not see a picket sign at the site. He claimed that the only authorized picket sign was one addressed to the Ee Jay dispute together with a notation that Respondent had no dispute with any other employer. Ferguson testified that he approached Dougherty and they spoke about whether Oil and Stone and Ee Jay were separate entities. Ferguson then instructed Bovenette, who had called him to the jobsite, not to use any picket signs until he checked on the matter with Respondent's counsel. Ferguson then left the jobsite, returned to the union hall, and called counsel, whom he was unable to reach. Thereafter, Ferguson returned to the jobsite and, according to Ferguson, "walked across the street and talked to" Pascero. Ferguson then described the conversation he had with Pascero. According to Ferguson, he told Pascero that Respondent was on strike against Ee Jay and that, in his view, Oil and Stone was the "same company" as Ee Jay. He also said that if this was not the case, he would "have to take the position that it was a nonunion Company." Ferguson also testified as follows:

> [W]e pulled up and Eddie [Dougherty] pulled on down the street just a little ways to get off the highway. And then the foreman asked me he said, well if we put a — could we put our own driver on there? And I said, yes. And he said, well what — and then Eddie, I believe it was, said what would it take for us to get straight? And I said, well sign the Tank Truck Agreement which we always thought that you came under.

There is, of course, a significant conflict in testimony between Dougherty and Ferguson. Both are interested parties whose testimony, in my view, was shaded toward their own interests. Dougherty seemed less than candid in his testimony about the relationship between Ee Jay and Oil and Stone. Ferguson's testimony about not seeing a picket sign on the Belleville jobsite was evasive and implausible, particularly since he testified that he told Bovenette not to use a picket sign. It is unfortunate that neither the General Counsel, who has the burden of proof on this issue, nor Respondent called the other witnesses to this conversation. In any event, I consider this credibility determination to be a close call.

There is an initial conflict as to whether there was picketing and whether Respondent sanctioned it. I find, in accordance with Dougherty's testimony, that there was picketing and that Respondent authorized it. There is also a question of whether the Oil and Stone and Ee Jay relationship was mentioned in the conversation between Ferguson and Pascero. Dougherty's account makes no mention of it; Ferguson's does. I tend to believe that Ferguson told Pascero that he thought the two companies were one and that, if they were not, he considered Oil and Stone to be nonunion. Dougherty himself testified that he and Bovenette had a conversation about Oil and Stone not being the same company as Ee Jay. There is no evidence that Respondent changed the picket signs, a fact which tends to confirm the substance of Ferguson's testimony on this point. Thus, it seems likely to me that the relationship of the two companies was discussed in the conversation between Ferguson and Pascero, as Ferguson testified.

A more significant conflict is the question of who initiated the contact between Pascero and Ferguson. Interestingly, Dougherty says that Pascero approached Ferguson and Ferguson says that he walked over to Pascero. It is difficult to determine who initiated the conversation, although I believe, from all the evidence, that Pascero was interested in resolving the matter and probably initiated the conversation. Earlier in the day Pascero had accompanied Dougherty in approaching the picket; it is likely that he did so again when Ferguson came to the site, as Dougherty testified.

The most crucial conflict involves the question of whether Ferguson and Shelder said that the union employees of Maclair and others would "probably walk off" if Oil and Stone remained on the job. This is what Dougherty testified was said. Ferguson testified that Pascero asked whether Maclair could "put their own driver on there" and that Dougherty asked what would be necessary "for us to get straight." Ferguson testified that he said that Dougherty should sign an agreement. Fergu-

son's testimony on this aspect of the conversation seemed ambiguous and truncated. The lack of clarity in Ferguson's testimony in this respect suggests that Dougherty's testimony on this point, which was not upset on cross-examination, was more reliable and that Ferguson and Shelder did indeed make statements about union employees "probably" walking off if Oil and Stone remained on the job.

B. *Discussion and Analysis*

1. The enmeshment of Oil and Stone

The first question herein is whether Respondent's picketing of Oil and Stone in aid of its dispute with Ee Jay was violative of the Act. Although there is some evidence that Respondent had a dispute with Oil and Stone because Edward Jr. did not carry a union card, it is clear that Respondent also meant to pressure Oil and Stone to achieve its goals in the strike against Ee Jay. This would be lawful if, and only if, Oil and Stone and Ee Jay were sufficiently interrelated so as to preclude Oil and Stone from being termed a "neutral" person. I find that Oil and Stone was not a "neutral" in the dispute between Respondent and Ee Jay.

Section 8(b)(4)(B) was designed to preserve the traditional right of striking employees to exert pressure on employers who are substantially involved in their dispute while protecting neutral employers from being enmeshed in zit. See *Teamsters Local 560 (Curtin Matheson)*, 248 NLRB 1212 (1980). Thus, this provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is "wholly unconcerned" or "not involved in any way" in the dispute between an employer and his employees. Id. at 1213. In determining whether two employers comprise a single integrated operation so as to strip them of the protection guaranteed by Section 8(b)(4)(B), the Board and the courts have employed a four-part examination of their relationship. This involves looking at the following basic factors: common ownership; interrelation of operations; common management; and common or centralized control of labor relations. See *Carpenters District Council (Baxter Construction)*, 201 NLRB 23, 25–26 (1973). Of "paramount significance is the nature of the day-to-day operations and of labor policies in the entities in question." *Television Artists AFTRA (Hearst Corp.)*, 185 NLRB 593, 598–599 (1970), enfd. 462 F.2d 887 (D.C. Cir. 1972). Moreover, it is active rather than potential control which is significant. See *Teamsters Local 749 (Transport, Inc.)*, 218 NLRB 1330, 1334 (1975). Indeed, even in the absence of common ownership, the Board will find separate but related employers not to be neutrals if they jointly control the labor relations of a group of employees. See *Teamsters Local 688 (Fair Mercantile)*, 211 NLRB 496 (1974).[5] However, none of the factors listed above is to be considered in isolation, "rather the Board weighs all of them to determine whether in fact one employer is involved or wholly unconcerned with the labor disputes of the other." *Retail Clerks Local 1001 (Land Title)*, 226 NLRB 754, 756 (1976), enf. denied on other grounds 627 F.2d 1133 (D.C. Cir. 1979), reversed 447 U.S. 607 (1980).

Applying the principles set forth above, I now turn to an analysis of the evidence.

It is undisputed that Oil and Stone and Ee Jay are commonly owned. James A. Dougherty and his brother Edward Jr. each owns 50 percent of the stock of Oil and Stone and 8 percent of the stock of Ee Jay. The remaining 84 percent of the Ee Jay stock is held in trust. The two companies also share common officers. Indeed, it appears that, at the time of the picketing, James Dougherty was president of both firms and Edward Jr. was vice president of both firms. Consideration of this evidence clearly points to a single employer relationship.

Although the two companies are operated as separate entities there is a distinct interrelationship of operations. They have common facilities and Ee Jay employees perform many clerical, sales, maintenance, and administrative functions for Oil and Stone. The Ee Jay dispatchers give work assignments to the Oil and Stone drivers. The firms also share a common fuel pump and oil storage tanks. It appears that Oil and Stone's primary source for the oil used in its spreaders is Ee Jay. Ee Jay tankers sometimes remain on the Oil and Stone jobsite to refill the spreaders. The most significant aspect of this interrelationship is the fact that, with one very limited exception, Oil and Stone utilizes Ee Jay employees for its work. Furthermore, James, president of Ee Jay, aids in preparing and securing bids for Oil and Stone jobs and he also is active in the operation of Oil and Stone's coal mix plant. Thus, although there is some separation of functions and while Oil and Stone does reimburse Ee Jay for its initial payment of employee wages and other expenses allocated to Oil and Stone, on balance, the interchange and sharing of employees and the common use of facilities and dispatchers weigh in favor of a finding of single employer status.

Insofar as common management is concerned, it is alleged that Edward Jr. runs Oil and Stone and James runs Ee Jay. The evidence, however, does not bear out such a clear distinction. James served as president of both firms at the time of the picketing, and I have already alluded to James' continued participation in the bidding aspect of Oil and Stone's operation. It also appears that Edward Sr. offers advice to his sons and gives direction to employees in both firms. Although Edward Jr. testified that he alone determines how many employees are needed for Oil and Stone and "sets them up" at the jobsite, he admitted that Edward Sr. might also supervise onsite work. It appears, however, that Furlow and Werner are longtime employees who need little, if any, supervision. As to assignment of work, Werner credibly testified that the Ee Jay dispatcher normally informs him for which company he will be working on any particular day. Significantly, Werner testified that, when he is working for Oil and Stone, it is the Ee Jay dispatcher to whom he makes

[5] Cf. *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3d Cir. 1982), discussing the conceptual distinction between the single employer doctrine and the joint employer doctrine. Thus, the joint employer concept recognizes that separate entities may "share or co-determine those matters governing the essential terms and conditions of employment." Id. at 1123.

requests for time off. He testified that he could not recall ever having made such a request to Edward Jr. Although, here again, Edward Jr. may be the ultimate manager of Oil and Stone, he gets considerable managerial and supervisory help from his father, his brother, and, significantly, the Ee Jay dispatchers so as to tip the balance in favor of a single integrated operation.

The final factor—common control of labor relations—definitely shows a single employer relationship or, at the very least, a joint or coemployer relationship. Although Edward Jr. testified that he "hired" Oil and Stone employees, it is clear from the record that, at most, he chooses which of the Ee Jay employees to use. And even here it appears that Edward Sr. originally decided to use Ee Jay employees and to pay them wages comparable to those of Ee Jay. Werner and Furlow apparently worked under this arrangement for many years. Thus, Edward Jr.'s control over hiring is potential rather than actual and his choice of employees was limited because Oil and Stone's primary employees outside himself were Werner and Furlow who were originally chosen by Edward Sr. Moreover, the rates of pay and fringe benefits for Werner and Furlow are not independently determined by Edward Jr., but are determined by Ee Jay. Indeed, their wages and benefits are the result of negotiations between Ee Jay and Respondent. Edward Jr. plays no part in these negotiations. His brother James does. Nor is there any evidence that Edward Jr. independently attempts to set the wage rates for other people who may drive spreaders or the other Ee Jay employees utilized by Oil and Stone on a pro rata reimbursable basis. In fact, when he participates in bidding decisions for Oil and Stone, James undoubtedly considers, as costs, wage rates which he, as an Ee Jay official, has helped determine. Finally, the Ee Jay dispatchers not only make assignments to Oil and Stone drivers but grant them time off. These are significant labor relations functions. All this evidence points to actual rather than potential control by Ee Jay over the labor relations of Oil and Stone. It not only confirms a single employer relationship, but it shows, at the very least, a joint or coemployer relationship with respect to those employees who perform work for Oil and Stone.

From all the evidence, it appears that Oil and Stone is an appendage of Ee Jay. It is commonly owned and to a great degree commonly managed. It shares common facilities with Ee Jay and uses Ee Jay oil for its operations. Oil and Stone also utilizes primarily the employees of Ee Jay to perform its work and Ee Jay dispatchers have significant supervisory authority over those employees. The wages and benefits of Oil and Stone employees are set by Ee Jay. Thus, Oil and Stone employees—who are in fact also Ee Jay employees—have a definite interest in the wages and benefits negotiated by Respondent for Ee Jay employees. In these circumstances, Oil and Stone is sufficiently related to Ee Jay to constitute, with it, either a single or a coemployer. Oil and Stone certainly cannot be termed neutral in Ee Jay's dispute with Respondent. Accordingly, when Respondent picketed Oil and Stone, it was engaging in primary picketing and did not violate Section 8(b)(4)(B).

2. The enmeshment of Maclair

The second question herein is whether, even assuming a single or coemployer relationship between Ee Jay and Oil and Stone, Respondent unlawfully enmeshed other neutrals at the Belleville jobsite in its dispute with Ee Jay and Oil and Stone. As I have indicated, I find that there was actual picketing at the jobsite. I also find that the picketing was undertaken by, or on behalf of, Respondent. The picket signs used clearly identified Ee Jay and Oil and Stone as the primary employer and the primary employer, in the person of Edward Jr., was engaged in normal business operations at the site of the picketing. The evidence as to the location of the picketing was sketchy at best. However, there is no evidence that the picketing itself was not "reasonably close" to the Oil and Stone job situs or that it was addressed specifically to neutrals. Nor has the General Counsel argued that the location of the picketing itself indicated that it was directed at employers other than Oil and Stone. Indeed, in his brief, counsel for the General Counsel concedes that "the pickets appeared near equipment owned by [Oil and Stone]." Thus, I must conclude that the General Counsel has not proved that Respondent's picketing, considered alone, violated the Board's *Moore Dry Dock* standards.[6]

The *Moore Dry Dock* standards, however, are evidentiary, not substantive, in nature and thus are not a conclusive guide for determining the legality of common situs picketing. Therefore, even compliance with the standards "does not immunize a union's picketing . . . for a union may, by its other conduct, reveal that its objective is secondary." *Teamsters Local 126 (Ready Mixed Concrete)*, 200 NLRB 253, 254–255 (1972).

The most significant incident, apart from the picketing, which might cast light on Respondent's objectives is the conversation between Respondent's agent, Ferguson, and Maclair's job superintendent, Pascero. The General Counsel has not alleged that Ferguson's statement amounted to a separate violation of Section 8(b)(4)(B). Thus, its use is apparently limited to shedding light of the true objective for the otherwise lawful picketing which was directed at Oil and Stone—a primary employer by virtue of its relationship with Ee Jay. Indeed, it appears that Respondent had a separate dispute with Oil and Stone, even apart from its relationship with Ee Jay, because its only worker on the jobsite, Edward Jr., did not possess a union card. In any case, a dispute with either Ee Jay or Oil and Stone would have justified an appeal to Oil and Stone and its employees. But it would

[6] In *Sailors Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950), the Board set forth evidentiary standards which would insulate common situs picketing from the strictures of Sec. 8(b)(4) if the following circumstances obtain:

(a) The picketing is strictly limited to times when the primary employer is present at the common situs.

(b) The primary employer is engaged in its normal business operations at the common situs.

(c) The picketing is limited to places "reasonably close" to the location of the primary employer.

(d) The picketing discloses clearly that the dispute is with the primary employer.

not have justified an appeal to Maclair or other neutrals and their employees.

The simple fact that a picket, ostensibly directed at Oil and Stone, might also affect other, neutral, employers and employees at the common jobsite is not objectionable. Indeed, a union obviously hopes that its pickets keep neutral employees from performing services for their employers. See *Los Angeles Building Trades Council (Sierra South)*, 215 NLRB 288, 290–291 (1974). As the Supreme Court recognized in *Electrical Workers IUE Local 761 v. NLRB*, 366 U.S. 667, 673 (1961):

> "Almost all picketing, even at the situs of the primary employer and surely at that of the secondary, hopes to achieve the forbidden objective, whatever other motives there may be and however small the chances of success." . . . But picketing which induces secondary employees to respect a picket line is not the equivalent of picketing which has an object of inducing those employees to engage in concerted conduct against their employer in order to force him to refuse to deal with the struck employer.

Thus, single isolated approaches to neutral employees (*Sierra South*, supra), or even neutral employers *(Electrical Workers IBEW Local 453 (Southern Sun)*, 237 NLRB 829, 830 (1978)), are not violative of the Act unless there is evidence that the statements themselves reflect an unlawful object or there is additional circumstantial evidence establishing such object. See *Sierra South*, 215 NLRB at 291, and cases cited at fns. 6 and 7. See also *Electrical Workers IBEW Local 441 (Rollins Communications)*, 222 NLRB 99 (1976); and *Electrical Workers IBEW Local 3 (Hyland Electric)*, 204 NLRB 193, 195 (1973).

In the instant case, it appears that the neutral employer approached the union representative. Obviously, a union is less culpable when a neutral approaches its representative and asks how the dispute can be resolved. The Board finds no violation where the union representative, on being informed that a neutral will remove the offending employer, does in fact inform the neutral that the union will cease its picketing. The Board views this as nothing more than compliance with the Board's rule that picketing cannot take place in the absence of the primary employer. See *Rollins*, supra at 101. The Board has also held that it is not unlawful to give notice of a prospective strike action against a primary employer to a neutral. Ibid.

Apart from who initiated the conversation, however, Ferguson's remarks, according to Dougherty's credited account, amounted to more than mere notification to a neutral of a primary dispute elsewhere. Ferguson suggested that if Oil and Stone remained on the job, that is, if it was not removed, "union people" would probably "walk off." Since he was talking to a Maclair official, it is obvious that Ferguson meant that Maclair's employees, some of whom were represented by Respondent, would walk off the job. Shelder, a steward for Respondent and a Maclair employee, agreed. These statements suggested to Pascero, a neutral, that he might be subjected to strike action if he did not remove Oil and Stone. Although neutral employees might well act as Ferguson and Shelder predicted they would, their statements to this effect were, it seems to me, subtle attempts to coerce the neutral into believing that Respondent—with its officials on the scene—would be able to, and would in fact, carry out this prediction. Significantly, the remarks were addressed to the very firm, Maclair, which had the authority to break a contract with Oil and Stone. That the conversation had its intended effect is shown by Pascero's actions immediately after the conversation. He called his office and replaced Oil and Stone. When this was accomplished the picketing ended. Accordingly, I believe that the remarks by Ferguson and Shelder revealed an unlawful object to be achieved through unlawful means: Respondent meant to pressure Maclair, by threats of strike action against it, in order to force Oil and Stone off the job.

Nor can I conclude that the conversation was an isolated incident which could not have tainted the picketing itself. Ferguson's appearance on the scene seems to me to have been significant. He was in a position of authority capable of carrying out the strike threat and he addressed the very neutral who could accomplish the objective of removing Oil and Stone. There was a determined effort to give emphasis to the otherwise ambiguous picketing. This is reinforced by the fact that Respondent's steward, Shelder, affirmed Ferguson's remarks about the employees walking off their jobs. Thus, the two statements were more than mere slips of the tongue by prounion employees or employee pickets and they amounted to more than mere predictions of what might happen.

In these circumstances, I find that Respondent's picketing had, as an object, the enmeshing of Maclair, a neutral employer, and its employees in a dispute which was not its own. More particularly, an object of the picketing was to force Maclair to cease doing business with Oil and Stone, a result which was in fact accomplished. Picketing with such an object is violative of Section 8(b)(4)(i) and (ii) of the Act.[7]

CONCLUSIONS OF LAW

1. By picketing Maclair at the Belleville, Illinois jobsite, Respondent induced and encouraged individuals employed by Maclair to engage in a strike or refusal, in the course of their employment, to perform services, and threatened, restrained, or coerced Maclair with an object of forcing or requiring Maclair to cease doing business with Oil and Stone or Ee Jay.

2. The above picketing constitutes a violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

3. The above violation is an unfair labor practice which affects interstate commerce within the meaning of Section 2(6) and (7) of the Act.

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[7] Although Respondent also represented employees of Hoeffken, the General Counsel has not proved by a preponderance of the evidence that Respondent's secondary threat and picketing extended to Hoeffken or its employees. Nor does the evidence show a proclivity to violate the Act. Accordingly, I see no reason to find an unlawful enmeshment of Hoeffken or to extend the remedial order to any employer other than Maclair.

4. Respondent has not otherwise violated the Act.

THE REMEDY

Having found a violation of the Act herein, I shall order that Respondent cease and desist from its unlawful conduct and post an appropriate notice.

Upon these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Teamsters Local Union No. 50, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall

1. Cease and desist from picketing or otherwise inducing or encouraging employees of Maclair Asphalt Co. to strike or refuse, in the course of their employment, to perform services, or threatening, coercing, or restraining Maclair Asphalt Co. where an object of such conduct is to force or require Maclair to cease doing business with E. J. Dougherty Oil and Stone Supply, Inc. or Ee Jay Motor Transport, Inc.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Post at its office and meeting halls copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the Regional Director for Region 14 sufficient copies of this notice, on forms provided by him, for posting by Maclair Asphalt Co., if willing.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps have been taken to comply herewith.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."